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SUPREME COURT OF THE UNITED STATES

October Term, 1984

No. 84-832

Office - Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS,
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HYBUD EQUIPMENT CORP., et al.,
Petitioners,

v.

CITY OF AKRON, OHIO, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the Sixth Circuit err in holding that the Parker v. Brown state action exemption to the Sherman Act applied to the City of Akron's ordinance requiring that all solid waste within its limits be taken to its Recycle Energy System plant for disposal where the ordinance was enacted by the City at the insistence of a state agency, acting in furtherance of its legislative mandate, and pursuant to powers vested in the City by state law?

2. Did the Sixth Circuit err in holding that the City of Akron may require that all solid waste collected within its limits be brought to the City's Recycle Energy System for disposal without bringing about an unconstitutional taking of the recyclable materials mixed within that solid waste?

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Respondents, Ohio Water Development Authority, City of Akron, Ohio, and County of Summit, Ohio, respectfully request that this Court deny the petition for writ of certiorari seeking review of the Sixth Circuit's opinion in this case. That opinion is reported at 742 F.2d 949.

COUNTER STATEMENT OF THE CASE

In the late 1960's, officials of the City of Akron and of Summit County, Ohio, foresaw an impending solid waste disposal crisis principally triggered by (a) Ohio's new, stringent solid waste disposal regulations, which placed substantial constraints on the future location and operation of landfills, and (b) the fast diminishing capacity of existing landfill sites within the County. [Petitioners' Appendix F at 119a; Petitioners' Appendix E at 62a]

In response, Akron's Planning Department undertook extensive studies of alternative, long-range solutions to the solid waste disposal problem. [Petitioners' Appendix F at 119a-120a; Petitioners' Appendix E at 62a] The City's planners concluded that a recycle energy system ("RES"), designed to incinerate solid waste and to produce energy using the heat generated by incineration, was the best

long-range solution to that problem. [Petitioners' Appendix F at 120a-121a; Petitioners' Appendix E at 62a] However, the RES concept was shelved as economically unfeasible because at the time no potential markets existed for the energy that the facility would generate. [Petitioners' Appendix F at 121a-122a]

Circumstances changed in the early 1970's when Ohio Edison Company, which had been providing steam to Akron's central business district, petitioned the Public Utilities Commission of Ohio to abandon that service. [Petitioners' Appendix F at 108a-109a; Petitioners' Appendix E at 62a] With the steam market now available, the City determined that RES could be economically feasible and presented the best long-term solution to the City's solid waste disposal problem. [Petitioners' Appendix F at 109a] A significant factor in the City's decision to undertake RES was the continuing problems, controversy and litigation generated by the City's only

landfill located in an unincorporated area outside the City. [Petitioners' Appendix F at 122a-124a; Petitioners' Appendix E at 62a]

The City wanted to finance the proposed RES with its own revenue bonds but was advised by its underwriters that the market would not accept its bonds due to its unfamiliarity with the RES technology and the recent New York City financial crisis. Therefore, in 1976, the City asked the Ohio Water Development Authority ("OWDA"), an agency of the State of Ohio, to finance the project. [Petitioners' Appendix E at 62a] In 1975, the Ohio legislature had enacted legislation mandating OWDA, to implement "the public policy of the State . . . to provide . . . efficient and proper methods of disposal, salvage and reuse of or recovery of resources from solid waste . . . ." Ohio Rev. Code §6123.03 [Respondents' Appendix A]. To effect its mandate, the General Assembly vested OWDA with power to finance solid waste projects by issuing revenue bonds (Ohio Rev.

Code §6123.04(F) [Respondents' Appendix B]), and in conjunction with such projects and their financing, to enter into cooperative agreements with other governmental agencies containing such terms as are necessary to safeguard ". . . the respective interests of the parties thereto . . . ." (Ohio Rev. Code §6123.13 [Respondents' Appendix C]).

After concluding that Akron's proposed RES would further the state policy the state legislature mandated OWDA to implement, OWDA agreed to finance the project. [Petitioners' Appendix E at 62a] OWDA and its underwriters concluded that in order to market the revenue bonds, it would be necessary to assure the bondholders that RES would receive an adequate supply of solid waste, and that to do so, it would be necessary for the City to exercise its power under Ohio law to require that all solid waste generated within the City's limits be taken to RES for disposal. [Petitioners' Appendix F at 81a; Petitioners' Appendix E at 62a] OWDA imposed this

requirement upon the City in a cooperative agreement entered into between OWDA, the City and Summit County. [Petitioners' Appendix E at 62a] Pursuant to that cooperative agreement, the City enacted the ordinance that Petitioners challenge in this litigation. [Petitioners' Appendix E at 62a]

The ordinance at issue controls only the disposal of solid waste and mixed solid waste (solid waste made up of a mixture of nonrecyclable and recyclable materials). [Petitioners' Appendix E at 62a] The ordinance does not control the disposition of presorted recyclables -- i.e., wastepaper, cardboard, and metals segregated for recycling or other use by the person generating the waste. [Petitioners' Appendix E at 64a]

Petitioners sued to enjoin enforcement of the ordinance. Petitioners' challenge was based upon the Sherman Act, 15 U.S.C. §§1 and 2, the Commerce Clause of the United States Constitution, the due process, equal protection and taking provisions of the Fourteenth

Amendment, and provisions of the Ohio Constitution. The district court found for the Respondents on all claims. [Petitioners' Appendix F] On appeal, the United States Court of Appeals for the Sixth Circuit affirmed the judgment of the district court. [Petitioners' Appendix E] Petitioners' petition for certiorari on the antitrust and taking issues was granted, the judgment vacated and the case remanded to the Sixth Circuit for further consideration in light of Community Communications Co., Inc. v. City of Boulder, Colorado, 455 U.S. 40 (1982). [Petitioners' Appendix D] The Sixth Circuit remanded the case to the district court for reconsideration of the antitrust issue in light of Boulder. [Petitioners' Appendix E] The district court ruled that Respondents' challenged conduct fell within the Parker v. Brown state action exemption. [Petitioners' Appendix F] The Sixth Circuit affirmed the judgment of the district court. [Petitioners' Appendix A]

REASONS FOR DENYING THE WRIT

I. THE SIXTH CIRCUIT CORRECTLY APPLIED THE DECISIONS OF THIS COURT IN HOLDING THAT UNDER THE CIRCUMSTANCES OF THIS CASE, RESPONDENTS' CHALLENGED CONDUCT FELL WITHIN THE PARKER v. BROWN STATE ACTION EXEMPTION

To pique interest in their appeal, Petitioners erroneously argue that the Sixth Circuit's decision establishes "a new standard for applying the state action exemption to subordinate state agencies which is in conflict with, and will undermine, the holdings and rationales of a number of the Court's decisions over the past decade." [Petitioners' Brief at 6]

Not so! Analysis of the Sixth Circuit's decision reveals a ratio decidendi consistent with this Court's decisions. While rejecting the district court's conclusion that the statutes governing OWDA specifically authorized OWDA to impose the challenged restraint on the City, the Sixth Circuit, guided by City of Lafayette v. Louisiana Power & Light

Co., 435 U.S. 389 (1978), correctly concluded that this lack of specificity was not dispositive of the Parker exemption issue.

> "A municipality, the plurality held in Lafayette, is not necessarily required 'to point to a specific, detailed legislative authorization before it properly may assert a Parker defense.' However, there must be evidence that the state 'authorized or directed a given municipality to act as it did.' 435 U.S. at 414."

[Petitioners' Appendix A at 18a] The Sixth Circuit next observed that "OWDA's authority to engage in the actions under challenge is somewhere in between a specific state directive and a general, 'neutral' grant of powers" of the type considered in Boulder -- i.e., a general legislative grant of home rule power with no specific authority to act in the area where the challenged conduct takes place. [Petitioners' Appendix A at 18a] As the Sixth Circuit later stated in its opinion, "a state's broad authorization for the financing of waste facilities is not a 'neutral' grant of powers as in Boulder." [Petitioners' Appendix A at 25a]

The Sixth Circuit then applied the touchstone set forth in the plurality opinion in Lafayette for determining whether the Parker exemption applies to such an "in between" case. Specifically, Justice Brennan, after stating that a political subdivision need not "point to a specific, detailed legislative authorization before it may properly assert a Parker defense to an antitrust suit," wrote:

> "While a subordinate governmental unit's claimed Parker immunity is not as readily established as the same claim by a state government sued as such, we agree with the Court of Appeals that an adequate state mandate for anticompetitive activities of cities and other subordinate governmental units exist when it is found 'from the authority given a governmental entity to operate in a particular area, that the legislature contemplated the kind of action complained of.'" 435 U.S., at 415 (emphasis added).

Under this standard, the applicability of the Parker immunity to any given conduct is dependent upon an analysis of the underlying facts and the authority state law gives subordinate governmental units to operate in the area where the challenged conduct takes place.

In this case, the challenged conduct is municipal monopolization of the disposal of solid waste generated within the municipality. Municipalities throughout this nation have engaged in this conduct since long before the Sherman Act was enacted; and their conduct has been uniformly upheld as a lawful exercise of police power by this and other courts. California Reduction Co. v. Sanitary Reduction Works, 199 U.S. 306 (1905); Gardner v. Michigan, 199 U.S. 325 (1905); In re Vandine, 23 Mass. (6 Pick) 187, 17 Am. Dec. 351 (1827); State v. Orr, 68 Conn. 101, 35 A. 770, 771 (1896); Grand Rapids v. DeVries, 123 Mich. 570, 82 N.W. 269, 273-274 (1900); State v. Robb, 100 Me. 180, 60 A. 874, 877 (1905); O'Neal v. Harrison, 96 Kan. 339, 150 P. 551 (1915) (citing 2 Dillon on Municipal Corporations (5th Ed.) §678: "An exclusive right [to collect garbage and refuse matter] so created is not open to objection that it is a monopoly."); Valley Spring Hog Ranch Co. v.

Plagmann, 282 Mo. 1, 220 S.W. 1, 4-5 (1920); Burns v. City of Enid, 92 Okla. 67, 217 P. 1038, 1039 (1923); Strub v. Village of Deerfield, 119 Ill. 2d 401, 167 N.E.2d 178, 180 (1960). As stated in Wheeler v. City of Boston, 233 Mass. 275, 123 N.E. 684, 686 (1919):

> "These decisions rest in general upon the idea that garbage is widely regarded as an actual and potential source of disease or detriment to the public health, and that therefore it is within the well-recognized limits of the police power, for the municipality, acting for the common good of all, either to take over itself or to confine to a single person or corporation the collection, transportation through the streets and final disposition of a commodity which so easily may become a nuisance. Private interests must yield to that which is established for the general benefit of all."

As the Sixth Circuit said in its first decision in this case:

> "Control of local sanitation, including garbage collection and disposal, like fire and police protection, is a traditional, paradigmatic example of the exercise of municipal police powers reserved to state and local governments under the Tenth Amendment. Ordinances

> regulating garbage collection and disposal are rationally related to a matter of legitimate local concern. Courts in literally hundreds of reported cases have upheld the authority of local governments to monopolize and control local garbage collection by eliminating or restraining competition among private collectors. See Annots., Validity of Statutory or Municipal Regulations as to Garbage, 15 A.L.R. 287 (1921); 72 A.L.R. 520 (1931); 135 A.L.R. 1305 (1941). If any area of the law can be said to be well settled, this one is."

[Petitioners' Appendix E at 68a] In Ohio, the legislature has long authorized municipalities to collect and dispose of the solid waste [Ohio Rev. Code Ann. §§715.43 and 717.01]; and the state courts have uniformly held that municipalities may exercise their power by monopolizing the collection and disposal of solid waste generated within their limits. State, ex rel. Moock v. Cincinnati, 120 Ohio St. 500, 166 N.E. 583 (1929); City of Canton v. Van Voorhis, 61 Ohio App. 419, 22 N.E.2d 651 (1939).

It was in this factual and legal environment that in 1975, the Ohio legislature

adopted Ohio Rev. Code Chapter 6123 mandating OWDA to alleviate the growing solid waste disposal problem by financing modern efficient waste disposal projects through the issuance of revenue bonds. Among other things, the legislature authorized OWDA to enter into cooperative agreements with governmental beneficiaries of its financing "with a view of effective cooperative action and safeguarding of the respective interest of the parties thereto." (Emphasis added.) Ohio Rev. Code §6123.13 [Respondents' Appendix C]

In 1976, the City of Akron, unable to finance on its own the RES plant it needed to stave off an impending solid waste disposal crisis, successfully petitioned OWDA to finance the project. However, OWDA was advised by its underwriters that it could not sell its revenue bonds to finance the project without the assurance of an adequate supply of solid waste to fill the RES plant. Given this economic reality and established Ohio

law authorizing municipal monopolization of the disposal of solid waste, OWDA, acting in furtherance of its legislative mandate and pursuant to the contracting authority vested in it by the legislature, required the City to covenant that it would exercise its power to require that all solid waste generated within its limits be taken to the RES for disposal. Pursuant to this covenant the City enacted the challenged ordinance.

Based on these facts, the Sixth Circuit found from the authority the state legislature has given both OWDA and the City to operate in the area of solid waste disposal that Respondents' challenged conduct was a "reasonable and foreseeable exercise" of that legislatively delegated authority. In other words, the Sixth Circuit concluded that the state legislature, in giving OWDA the power and mandate to finance disposal projects for municipalities, contemplated the kind of action complained of. [Petitioners' Appendix A at 21a]

Our task, therefore, is to determine whether the restraints in question are a reasonable and foreseeable exercise of delegated powers within the scope of the agency's authority. If the challenged restraints are reasonably related to an agency's express powers and reasonably designed to promote the state aims within a designated field of regulation, they can be found to result from a 'clearly and affirmatively expressed state policy' to displace competition.

Unlike the general guarantee of legislative autonomy in Boulder, OWDA's powers are expressly limited to the promotion of safe waste disposal systems. . . .

[O]WDA's statutory mandate expressly provides that the agency may contract with other government agencies, including municipalities, to carry out state policy. Under Ohio law, municipalities are expressly authorized to regulate the disposal of waste and construct facilities for the disposal of waste. This authority is granted by statute and not merely claimed by virtue of constitutional home-rule powers as in Boulder. The Ohio courts, as the district court noted in its first decision in this suit, have held that a municipality may exercise this power through a monopoly. See State ex rel Moock v. Cincinnati, 120 Ohio St. 500, 166 N.E. 583 (1929); City of Canton v. Van Voorhis, 61 Ohio App. 419, 22 N.E.2d 651 (1939)."

> We find that the ordinance and agreement under challenge bear a reasonable relationship to the state policy promoted by OWDA and the express powers delegated to OWDA and Akron. The ordinance is limited in scope to the collection and disposal of solid waste, and its promulgation was an essential element of a plan to carry out OWDA's statutory mandate. OWDA's reliance on the statutory authority of a municipality to regulate -- even by monopoly -- the disposal of refuse was a foreseeable result of the legislative grant of power to contract with municipalities." [Petitioners' Appendix A at 20a, 21a, 22a, and 23a]

In short, and paraphrasing Lafayette, the Sixth Circuit found "from the authority given [OWDA and the City] to operate in a particular area [solid waste disposal], that the legislature contemplated the kind of action complained of." Thus, its decision creates no "new standard." To the contrary, it faithfully follows and applies the standard established by this Court in Lafayette and its progeny.

Petitioners premise their "new standard" argument on the Sixth Circuit's conclusion that the statutes governing OWDA, standing

alone, do not constitute a clearly articulated and affirmatively expressed state policy favoring municipal monopolization of solid waste. From this Petitioners leap to the wholly unwarranted conclusion that the Sixth Circuit held "that the state action exemption was not available under the standards established by this Court" and therefore had to create a "new standard" of its own to justify application of the state action exemption to the challenged conduct. [Petitioners' Brief at 8] Petitioners' argument is created out of the air. Nowhere does the Sixth Circuit so hold. To the contrary, the court concluded its analysis, outlined above, with the following holding:

> "We hold, therefore, that the statutory delegation of regulatory power to the City conjoined with the powers and aims of OWDA satisfy the requirement that the challenged actions result from a clearly articulated and affirmative stated policy to displace competition." [Petitioners' Appendix A at 23a]

Petitioners conjure up a parade of horribles: "Recognition of the delegation-of-power principle adopted by the Sixth Circuit would undermine the rationale of the Court's prior decisions and jeopardize important national values." [Petitioners' Brief at 12] "The effect of the Sixth Circuit's decision is that any subordinate agency, no matter how limited its authority, would be given the power to create exempt restraints of trade." [Petitioners' Brief at 13] Nonsense! The Sixth Circuit's decision does not make law: it constitutes a workmanlike and correct application of principles established by this Court in Lafayette and its progeny to the special facts and state law under construction in this case; and it is simply another in a long line of decisions upholding municipal monopolization of the disposal of solid waste as a legitimate exercise of local governmental power.

II. THE SIXTH CIRCUIT CORRECTLY HELD THAT A CITY MAY REGULATE THE DISPOSAL OF MIXED SOLID WASTE, WHICH IS PER SE A NUISANCE, WITHOUT BRINGING ABOUT A TAKING OF RECYCLABLE MATERIALS CONTAINED IN THAT WASTE.

Petitioners do not dispute the general proposition that the City has the right to take without compensation property that constitutes a nuisance and a threat to the health and safety of the community. Nor can they for that right has been solidly established by this Court. Penn Central Transportation Co. v. City of New York, 438 U.S. 104, 145 (1978) (Rehnquist, J. dissenting); California Reduction Co. v. Sanitary Reduction Works, 199 U.S. 306, 321-23 (1905); Gardner v. Michigan, 199 U.S. 325, 331-33 (1905).

Furthermore, Petitioners acknowledge that this Court has held that municipal monopolization of the disposal of solid waste does not constitute an uncompensated taking of the valuable materials mixed in with the waste.

In California Reduction Co. v. Sanitary Reduction Works, 199 U.S. 306 (1905), this Court considered and rejected a taking claim in a factual context virtually identical to the facts in this case. Defendant haulers ("scavengers") challenged ordinances of the City and County of San Francisco requiring that all solid waste they collected in the City and County be taken to plaintiff's private reduction works for disposal. 199 U.S. at 307-308. The defendants asserted, among other things, that the ordinances in question took their property without just compensation because the solid waste they collected contained recyclable materials. The Supreme Court rejected this claim. Speaking for a unanimous Court, the elder Justice Harlan said:

> "Be all this as it may, the cremation and destruction of garbage and house refuse, under the authority of the municipal authorities, proceeding upon reasonable grounds, and at a place designated by law, as a means for the protection of the public health, cannot be properly regarded, within the meaning of the

> Constitution, as a taking of private property for public use, without compensation, simply because such garbage and house refuse may have had, at the time of its destruction, some element of value for certain purposes." 199 U.S. at 323.

See also Gardner v. Michigan, 199 U.S. 325, 332-333 (1905).

Petitioners argue, however, that the California Reduction line of authority and the so-called "nuisance exception" to the taking prohibition are not applicable to the challenged ordinance because (1) the recyclables within the mixed solid waste regulated by the ordinance pose no health or safety threat to the citizens of Akron, and (2) the City is using the solid waste to generate revenue.

Petitioners first argument -- that the recyclable per se pose no health hazard -- misses the mark in that it misconstrues the subject of the ordinance's regulation. The ordinance regulates mixed solid waste, not recyclable materials separate from that waste. In isolation recyclable materials may

or may not be a nuisance; it is unquestioned, however, that solid waste is a nuisance. The presence in solid waste of materials which, in and of themselves, do not constitute a potential danger to the public health does not negate the City's power to regulate the collection and disposal of such solid waste as a whole. As this Court emphasized in California Reduction, a city may regulate the whole or the mass of solid waste because it constitutes a nuisance without regard for the components that make up that mass:

> "The authorities were not bound, prior to the removal of such substances from the premises on which they were found, to separate those that were confessedly worthless from those which might be utilized. The garbage and refuse matter were all together, on the same premises, and as a whole or in the mass they constituted a nuisance which the public could abate or require to be abated, and to the continuance of which the community was not bound to submit." 199 U.S. at 322-23.

The district court specifically found that Akron's solid waste contains materials that

present a danger to the public health, welfare and safety if the mass of Akron's solid waste is not properly disposed of [Petitioners' Appendix F at 93a-94a], and the Sixth Circuit observed in its first opinion that solid waste disposal is as much a problem for cities today as in the past [Petitioners' Appendix E at 71a]. Petitioners do not contest these realities, and they alone justify the municipal action that Petitioners challenge.

Petitioners' second argument -- that the ordinance takes their property because the City is using the solid waste to generate revenues -- is based on (1) an unrealistically narrow view of the Ordinance and its relationship to RES and (2) bad logic.

First, the district court correctly held that the City adopted the ordinance to control a potential nuisance, not to raise revenue to enrich itself.

> "The Court finds that the plaintiffs' understanding of the legislative purpose is overly circumscribed

and removes the ordinance from its proper context. As indicated by the whereas clause on which the plaintiffs rely, the ordinance cannot be separated from the RES. Likewise, the City's purpose in constructing, and in financing the construction of the RES cannot be separated from the ordinance.

* * *

"The Court finds that the ordinance is a regulation adopted to control a nuisance (or potential nuisance) that incidentally impacts on some collectors who separate materials of value from the waste they collect.

* * *

"The ordinance is . . . part of the City's broader scheme to dispose of waste in a safe and sanitary manner at the RES. The ordinance is a reasonable means to achieve this legitimate goal." [Petitioners' Appendix F at 92a, 94a]

Petitioners did not challenge these findings on appeal, they were affirmed by the Sixth Circuit, and they bring the ordinance within the "nuisance exception" to the taking prohibition. Petitioners' argument at p. 20 of their petition that "[t]he Sixth Circuit found (Appendix E at 64a) . . . that the

purpose of the ordinance is to require cost-free transfer to the City of valuable materials to assure a high level of revenues for the RES" is not supported by the cited reference and is wrong.

Second, there is no logical nexus between the fact that RES will generate revenues to defray disposal costs and the conclusion Petitioners would draw therefrom that the ordinance effects a taking. Indeed, extending Petitioners' reasoning to its logical limits leads to the absurd conclusion that there would be no taking if the City simply incinerated the waste and landfilled the residue, recyclables and all, but that a taking has occurred because the City is making good use of the waste to produce saleable steam and recyclable ferrous metal to pay off the bonded indebtedness incurred to make RES a reality. Neither common sense nor decided case law supports such reasoning.

Petitioners' argument that the City's "taking" of the recyclables in the solid

waste they collect equates to an uncompensated taking of land is patently fallacious: solid waste is a nuisance, real estate is not. Furthermore, Petitioners' argument is predicated on the erroneous premise that they acquire property rights in the solid waste they collect in the City which cannot be "taken" by municipal regulation without compensation. Analysis negates this premise. Petitioners' right to collect solid waste in the City is a privilege which the City confers by license. License holders enjoy the privilege of collecting solid waste subject to such conditions as the City reasonably imposes; and they have no right to expect that those conditions will remain static. Thus, they have no basis to complain where, as here, a new condition is imposed which bears a reasonable relationship to the health and safety of the community. As the elder Justice Harlan, speaking for a unanimous court said in California Reduction, supra:

> "Still less has the licensed scavenger a right to complain; for his right to convey garbage and refuse through the public streets, in covered wagons, was derived from the public, and he was subject to such regulations as the constituted authorities, in their exercise of the police power, might adopt." 119 U.S. at 322.

So far as the record herein shows, Petitioners have always derived their rights to collect solid waste in Akron via the licenses the City has granted them and subject to the condition that they comply with all solid waste regulations imposed by the City. Thus, such "rights" as Petitioners can claim in the solid waste they collect in Akron and/or the recyclable materials contained therein have always been subject, ab initio, to the City's overriding right to regulate their businesses. Therefore, the fact that Petitioners have, in the past, been able to freely dispose of the solid waste they collect in Akron gives them no property right but, at most, a hoped-for expectation that they may do so in the future; an expectation ever subject to

extinguishment by reasonable regulation. Thus, as the district court correctly concluded, the ordinance has not taken any protectable property right from Petitioners.

> "[T]he collectors collect waste within the city of Akron only after they have obtained a license to do so. Under the ordinance the city will not seize the waste that is now in the trucks nor the waste in the transfer station. The city is regulating where the waste may be taken for disposal. Before the effective date of the ordinance the collectors are free to choose from among several disposal sites. The ordinance removes that choice, and collectors who continue to collect solid waste in Akron while the ordinance is in force will have to abide by its terms. The ordinance takes from the waste collectors the expectation that they would always be able to take the waste they collected within the city to a disposal site of their choice. The plaintiffs have not shown that this is a property right requiring protection under the fifth amendment." [Petitioners' Appendix F at-95a-96a]

In view of all of the foregoing, Respondents respectfully submit that the Sixth Circuit correctly concluded that this Court's opinions in California Reduction Co. v. Sanitary Reduction Works, supra, and Gardner v.

Michigan, supra, are dispositive of Petitioners' taking claims.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

APPENDIX A

Ohio Revised Code §6123.03

§6123.03 [Purposes.]

It is hereby declared to be the public policy of the state through the operations of the Ohio water development authority under this chapter to contribute toward one or more of the following: to provide for the comfort, health, safety, and general welfare of all employees and other inhabitants of the state and for the conservation of the land, air and water resources of the state through efficient and proper methods of disposal, salvage and reuse of or recovery of resources from solid wastes thereby eliminating or decreasing accident and health hazards including rodent and insect vectors of disease, public nuisance and the adverse effect on land values caused thereby and the scenic blight marring the landscape, to assist in the financing of solid waste facilities for industry, commerce, distribution and research, including public utility companies, to create or preserve jobs and employment opportunities or improve the economic welfare of the people of the state, or to assist and cooperate with governmental agencies in achieving such purposes. In furtherance of such public policy, the Ohio water development authority may initiate, acquire, construct, maintain, repair and operate solid waste projects or cause the same to be operated pursuant to a lease, sublease, or agreement with any person or governmental agency; may make loans and grants to governmental agencies for the acquisition or construction of solid waste facilities by such governmental agencies, may make loans to persons for the acquisition or construction of solid waste facilities by such persons; and may

issue waste revenue bonds of this state payable solely from revenues, to pay the cost of such projects. Any solid waste project shall be determined by the authority to be in compliance with Chapter 3734. of the Revised Code and with the regulations adopted by the director of environmental protection under section 3734.02 of the Revised Code. Any resolution of the authority providing for acquiring or constructing such projects or for making a loan or grant for such projects shall include a finding by the authority that such determination has been made. Determinations by resolution of the authority that a project is a solid waste facility under this chapter and is consistent with the purposes of Section 13 of Article VIII, Ohio Constitution, and this chapter shall be conclusive as to the validity and enforceability of the solid waste revenue bonds issued to finance such project and of the resolutions, trust agreements or indentures, leases, sub-leases, sale agreements, loan agreements and other agreements made in connection therewith, all in accordance with their terms.

APPENDIX B

APPENDIX B

B-1

Excerpts from Ohio Revised Code §6123.04

§6123.04 [Powers and duties.]

For the purposes of Chapter 6123. of the Revised Code, the Ohio water development authority may --

* * *

(F) Issue solid waste revenue bonds and notes and solid waste revenue refunding bonds of the state, payable solely from revenues as provided in section 6123.06 of the Revised Code, unless the bonds be refunded by refunding bonds, for the purpose of paying any part of the cost of one or more solid waste projects or parts thereof;

* * *

(I) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers under Chapter 6123. of the Revised Code:

* * *

(P) Do all acts necessary or proper to carry out the powers expressly granted in Chapter 6123. of the Revised Code.

APPENDIX C

APPENDIX C

C-1

Excerpt from Ohio Revised Code §6123.13

§6123.13 [Rental agreements.]

Any governmental agency or combination thereof may cooperate with the authority in the acquisition or construction of a solid waste project and shall enter into such agreements with the authority as are necessary, with a view to effective cooperative action and safeguarding of the respective interests of the parties thereto, which agreements shall provide for such contributions by the parties thereto in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties including without limitation the authorization of the construction of the project by one of the parties acting as agent for all of the parties and the ownership and control of the project by the authority to the extent necessary or appropriate for purposes of the issuance of solid waste revenue bonds by the authority.